

**SENATE, No. 358**

---

**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

**Sponsored by:**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

**Senators Vitale, Karcher, Scutari, Turner, Lesniak, Palaia and Weinberg**

**SYNOPSIS**

"New Jersey Smoke-Free Air Act"; prohibits smoking in indoor public places and workplaces.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1   **AN ACT** concerning smoking in indoor public places and  
2       workplaces and revising parts of statutory law.

3  
4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6  
7       1. This act shall be known and may be cited as the "New Jersey  
8       Smoke-Free Air Act."

9  
10      2. The Legislature finds and declares that: tobacco is the leading  
11      cause of preventable disease and death in the State and the nation,  
12      and tobacco smoke constitutes a substantial health hazard to the  
13      nonsmoking majority of the public; the separation of smoking and  
14      nonsmoking areas in indoor public places and workplaces does not  
15      eliminate the hazard to nonsmokers if these areas share a common  
16      ventilation system; and, therefore, subject to certain specified  
17      exceptions, it is clearly in the public interest to prohibit smoking in  
18      all enclosed indoor places of public access and workplaces.

19  
20      3. As used in this act:

21      "Bar" means a business establishment or any portion of a  
22      nonprofit entity, which is devoted to the selling and serving of  
23      alcoholic beverages for consumption by the public, guests, patrons  
24      or members on the premises and in which the serving of food, if  
25      served at all, is only incidental to the sale or consumption of such  
26      beverages.

27      "Cigar bar" means any bar, or area within a bar, designated  
28      specifically for the smoking of tobacco products, purchased on the  
29      premises or elsewhere; except that a cigar bar that is in an area  
30      within a bar shall be an area enclosed by solid walls or windows, a  
31      ceiling and a solid door and equipped with a ventilation system  
32      which is separately exhausted from the nonsmoking areas of the bar  
33      so that air from the smoking area is not recirculated to the  
34      nonsmoking areas and smoke is not backstreamed into the  
35      nonsmoking areas.

36      "Cigar lounge" means any establishment, or area within an  
37      establishment, designated specifically for the smoking of tobacco  
38      products, purchased on the premises or elsewhere; except that a  
39      cigar lounge that is in an area within an establishment shall be an  
40      area enclosed by solid walls or windows, a ceiling and a solid door  
41      and equipped with a ventilation system which is separately  
42      exhausted from the nonsmoking areas of the establishment so that  
43      air from the smoking area is not recirculated to the nonsmoking  
44      areas and smoke is not backstreamed into the nonsmoking areas.

45      "Indoor public place" means a structurally enclosed place of  
46      business, commerce or other service-related activity, whether  
47      publicly or privately owned or operated on a for-profit or nonprofit  
48      basis, which is generally accessible to the public, including, but not

1 limited to: a commercial or other office building; office or building  
2 owned, leased or rented by the State or by a county or municipal  
3 government; public and nonpublic elementary or secondary school  
4 building; board of education building; theater or concert hall; public  
5 library; museum or art gallery; bar; restaurant or other  
6 establishment where the principal business is the sale of food for  
7 consumption on the premises, including the bar area of the  
8 establishment; garage or parking facility; any public conveyance  
9 operated on land or water, or in the air, and passenger waiting  
10 rooms and platform areas in any stations or terminals thereof; health  
11 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et  
12 seq.); patient waiting room of the office of a health care provider  
13 licensed pursuant to Title 45 of the Revised Statutes; child care  
14 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);  
15 race track facility; facility used for the holding of sporting events;  
16 ambulatory recreational facility; shopping mall or retail store; hotel,  
17 motel or other lodging establishment; apartment building lobby or  
18 other public area in an otherwise private building; or a passenger  
19 elevator in a building other than a single-family dwelling.

20 "Person having control of an indoor public place or workplace"  
21 means the owner or operator of a commercial or other office  
22 building or other indoor public place from whom a workplace or  
23 space within the building or indoor public place is leased.

24 "Smoking" means the burning of, inhaling from, exhaling the  
25 smoke from, or the possession of a lighted cigar, cigarette, pipe or  
26 any other matter or substance which contains tobacco or any other  
27 matter that can be smoked.

28 "Tobacco retail establishment" means an establishment in which  
29 at least 51% of retail business is the sale of tobacco products and  
30 accessories, and in which the sale of other products is merely  
31 incidental.

32 "Workplace" means a structurally enclosed location or portion  
33 thereof at which a person performs any type of service or labor.  
34

35 4. a. Smoking is prohibited in an indoor public place or  
36 workplace, except as otherwise provided in this act.

37 b. Smoking is prohibited in any area of any building of, or on  
38 the grounds of, any public or nonpublic elementary or secondary  
39 school, regardless of whether the area is an indoor public place or is  
40 outdoors.  
41

42 5. The provisions of this act shall not apply to:

43 a. any cigar bar or cigar lounge that, in the calendar year ending  
44 December 31, 2004, generated 15% or more of its total annual gross  
45 income from the on-site sale of tobacco products and the rental of  
46 on-site humidors, not including any sales from vending machines,  
47 and is registered with the local board of health in the municipality  
48 in which the bar or lounge is located. The registration shall remain

1 in effect for one year and shall be renewable only if: (1) in the  
2 preceding calendar year, the cigar bar or lounge generated 15% or  
3 more if its total annual gross income from the on-site sale of  
4 tobacco products and the rental of on-site humidors, and (2) the  
5 cigar bar or cigar lounge has not expanded its size or changed its  
6 location since December 31, 2004;

7 b. any tobacco retail establishment, or any area the tobacco  
8 retail establishment provides for the purposes of smoking;

9 c. any tobacco business when the testing of a cigar or pipe  
10 tobacco by heating, burning or smoking is a necessary and integral  
11 part of the process of making, manufacturing, importing or  
12 distributing cigars or pipe tobacco; and

13 d. private homes, private residences and private automobiles.  
14

15 6. a. The person having control of a hotel, motel or other  
16 lodging establishment may permit smoking in up to 20% of its guest  
17 rooms.

18 b. Nothing in this section shall be construed to require a hotel,  
19 motel or other lodging establishment to provide a nonsmoking room  
20 to a guest if all the designated nonsmoking rooms are occupied.  
21

22 7. a. The person having control of an indoor public place or  
23 workplace shall place in every public entrance to the indoor public  
24 place or workplace a sign, which shall be located so as to be clearly  
25 visible to the public and shall contain letters or a symbol which  
26 contrast in color with the sign, indicating that smoking is prohibited  
27 therein, except in such designated areas as provided pursuant to this  
28 act. The sign shall also indicate that violators are subject to a fine.  
29 The person having control of the indoor public place or workplace  
30 shall post a sign stating "Smoking Permitted" in letters at least one  
31 inch in height or marked by the international symbol for "Smoking  
32 Permitted" in those areas where smoking is permitted.

33 b. The provisions of this section shall not be construed to  
34 prevent a lessee of the workplace, or space within the building or  
35 indoor public place, from enforcing the smoking restrictions  
36 imposed by the owner or operator of a commercial or other office  
37 building or other indoor public place.  
38

39 8. a. The person having control of an indoor public place or  
40 workplace shall order any person smoking in violation of this act to  
41 comply with the provisions of this act. A person, after being so  
42 ordered, who smokes in violation of this act is subject to a fine of  
43 not less than \$250 for the first offense, \$500 for the second offense  
44 and \$1,000 for each subsequent offense. A penalty shall be  
45 recovered in accordance with the provisions of subsections c. and d.  
46 of this section.

47 b. The Department of Health and Senior Services or the local  
48 board of health or the board, body or officers exercising the

1 functions of the local board of health according to law, upon written  
2 complaint or having reason to suspect that an indoor public place or  
3 workplace covered by the provisions of this act is or may be in  
4 violation of the provisions of this act, shall, by written notification,  
5 advise the person having control of the place accordingly and order  
6 appropriate action to be taken. A person receiving that notice who  
7 fails or refuses to comply with the order is subject to a fine of not  
8 less than \$250 for the first offense, \$500 for the second offense and  
9 \$1,000 for each subsequent offense. In addition to the penalty  
10 provided herein, the court may order immediate compliance with  
11 the provisions of this act. c. A penalty recovered under the  
12 provisions of this act shall be recovered by and in the name of the  
13 Commissioner of Health and Senior Services or by and in the name  
14 of the local board of health. When the plaintiff is the  
15 Commissioner of Health and Senior Services, the penalty recovered  
16 shall be paid by the commissioner into the treasury of the State.  
17 When the plaintiff is a local board of health, the penalty recovered  
18 shall be paid by the local board into the treasury of the municipality  
19 where the violation occurred.

20 d. A municipal court shall have jurisdiction over proceedings to  
21 enforce and collect any penalty imposed because of a violation of  
22 this act if the violation has occurred within the territorial  
23 jurisdiction of the court. The proceedings shall be summary and in  
24 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,  
25 c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a  
26 summons or warrant and shall issue only at the suit of the  
27 Commissioner of Health and Senior Services, or the local board of  
28 health, as the case may be, as plaintiff.

29 e. The penalties provided in subsections a. and b. of this section  
30 shall be the only civil remedy for a violation of this act, and there  
31 shall be no private right of action against a party for failure to  
32 comply with the provisions of this act.

33  
34 9. The provisions of this act shall supersede any other statute,  
35 municipal ordinance and rule or regulation adopted pursuant to law  
36 concerning smoking in an indoor public place or workplace, except  
37 where smoking is prohibited by municipal ordinance under  
38 authority of R.S.40:48-1 or 40:48-2, or by any other statute or  
39 regulation adopted pursuant to law for purposes of protecting life  
40 and property from fire or protecting public health, and except for  
41 those provisions of a municipal ordinance which provide  
42 restrictions on or prohibitions against smoking equivalent to, or  
43 greater than, those provided under this act.

44  
45 10. The Commissioner of Health and Senior Services, pursuant  
46 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
47 1 et seq.), shall adopt rules and regulations to effectuate the  
48 purposes of this act.

1        11. The following are repealed:  
2        P.L.1981, c.318 (C.26:3D-1 et seq.);  
3        P.L.1981, c.319 (C.26:3D-7 et seq.);  
4        P.L.1981, c.320 (C.26:3D-15 et seq.);  
5        P.L.1985, c.184 (C.26:3D-23 et seq.);  
6        P.L.1985, c.186 (C.26:3D-32 et seq.);  
7        P.L.1985, c.318 (C.26:3D-38 et seq.);  
8        P.L.1985, c.381 (C.26:3D-46 et seq.);  
9        P.L.1985, c.185 (C.26:3E-7 et seq.); and  
10       P.L.1998, c.35 (C. 30:5B-5.3).

11

12       12. This act shall take effect on the 90th day after enactment.

13

14

15

#### STATEMENT

16

17       This bill, the "New Jersey Smoke-Free Air Act," prohibits  
18       smoking in workplaces and indoor public places throughout the  
19       State, except for certain specifically exempted establishments, and  
20       it would prohibit smoking in any area of any public or nonpublic  
21       elementary or secondary school, whether in the buildings or on the  
22       grounds of the school.

23       Under the bill, "workplace" is defined as a structurally enclosed  
24       location or portion thereof at which one or more persons perform  
25       any type of service or labor. The bill defines "indoor public place"  
26       as a structurally enclosed place of business, commerce or other  
27       service-related activity, whether publicly or privately owned or  
28       operated on a for-profit or nonprofit basis, which is generally  
29       accessible to the public. The definition also provides as examples  
30       of indoor public places the following: commercial office buildings,  
31       retail establishments, government offices, schools, sporting arenas,  
32       bars, restaurants, public libraries, museums, public conveyances,  
33       hotels and motels, child care centers, health care facilities, waiting  
34       rooms in physicians' and other health care providers' offices,  
35       recreational facilities and passenger elevators.

36       The bill would exempt from the restrictions on smoking:

37       1) any cigar bar or cigar lounge that, in the calendar year ending  
38       December 31, 2004, generated 15% or more of its total annual gross  
39       income from the on-site sale of tobacco products and the rental of  
40       on-site humidors, not including any sales from vending machines,  
41       and is registered with the local board of health in the municipality  
42       in which the bar or lounge is located. If a cigar bar or lounge is  
43       located in an area within a bar or other establishment (where  
44       smoking is prohibited), the cigar bar or lounge must be an area that  
45       is enclosed by solid walls or windows, a ceiling and a solid door  
46       and equipped with a ventilation system which is separately  
47       exhausted from the nonsmoking areas of the bar or other  
48       establishment so that air from the smoking area is not recirculated

1 to the nonsmoking areas and smoke is not backstreamed into the  
2 nonsmoking areas;

3 2) any tobacco retail establishment, or any area the tobacco  
4 retail establishment provides for the purposes of smoking; and

5 3) any tobacco business when the testing of a cigar or pipe  
6 tobacco by heating, burning or smoking is a necessary and integral  
7 part of the process of making, manufacturing, importing or  
8 distributing cigars or pipe tobacco.

9 Also, the provisions of the bill would not apply to private homes,  
10 private residences and private automobiles. This provision  
11 concerning private homes and residences is intended to include  
12 residences such as a rectory or convent which is located on the  
13 grounds of a private school.

14 In addition, the bill provides that a hotel, motel or other lodging  
15 establishment may permit smoking in up to 20% of its guest rooms.  
16 The bill specifies, however, that its provisions shall not be  
17 construed to require a hotel, motel or other lodging establishment to  
18 provide a nonsmoking room to a guest if all the designated  
19 nonsmoking rooms are occupied.

20 The bill provides that its provisions shall supersede any other  
21 statute, municipal ordinance and rule or regulation adopted pursuant  
22 to law concerning smoking in an indoor public place or workplace,  
23 except where smoking is prohibited by municipal ordinance or by  
24 any other statute or regulation adopted pursuant to law for purposes  
25 of protecting life and property from fire or protecting public health,  
26 and except for those provisions of a municipal ordinance which  
27 provide restrictions on or prohibitions against smoking equivalent  
28 to, or greater than, those provided under the bill.

29 The bill provides that the person in control of the indoor public  
30 place or workplace has the authority to enforce the bill and that a  
31 lessee of the workplace or space within the building or indoor  
32 public place may also enforce the smoking restrictions. The owner  
33 or operator of a commercial or other office building or other indoor  
34 public place, from whom a workplace or space within the building  
35 or indoor public place is leased, is the person in control of the  
36 building for the purposes of complying with and enforcing the  
37 provisions of the bill.

38 The bill provides penalties for violations as follows:

39 -- a person who smokes in violation of the bill would be subject  
40 to a fine of not less than \$250 for the first offense, \$500 for the  
41 second offense and \$1,000 for each subsequent offense; and

42 -- a person in control of the indoor public place or workplace  
43 who fails or refuses to comply with an order from the Department  
44 of Health and Senior Services or the local board of health  
45 concerning a violation would be subject to a fine of not less than  
46 \$250 for the first offense, \$500 for the second offense and \$1,000  
47 for each subsequent offense.

1       The penalties provided above shall be the only civil remedy for a  
2 violation of the bill, and there shall be no private right of action  
3 against a party for failure to comply with the provisions of the bill.

4       It is noted that the enforcement of the provisions of this bill  
5 should not result in any expenditures by the State in excess of  
6 \$90,000 a year, since much of the enforcement will be carried out at  
7 the local level. Further, any penalties recovered through  
8 enforcement will be paid to the State treasury, if the plaintiff is the  
9 Commissioner of Health and Senior Services, or the treasury of the  
10 municipality where the violation occurred, if the plaintiff is the  
11 local board of health.

12       The bill repeals certain statutes, which would be obviated by the  
13 bill, governing smoking in the following settings:

- 14       -- passenger elevators (N.J.S.A.26:3D-1 et seq.);
- 15       -- health care facilities and physicians' offices (N.J.S.A.26:3D-7  
16 et seq.);
- 17       -- educational institutions (N.J.S.A.26:3D-15 et seq.);
- 18       -- places of employment (N.J.S.A.26:3D-23 et seq.);
- 19       -- food and marketing stores (N.J.S.A.26:3D-32 et seq.);
- 20       -- indoor public places (N.J.S.A.26:3D-38 et seq.);
- 21       -- government buildings (N.J.S.A.26:3D-46 et seq.);
- 22       -- restaurants (N.J.S.A.26:3E-7 et seq.); and
- 23       -- child care centers (N.J.S.A.30:5B-5.3).

24       Finally, the bill would take effect 90 days after its enactment.